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8                    UNITED STATES DISTRICT COURT

9                  NORTHERN DISTRICT OF CALIFORNIA

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11  JEFFREY JOHNSON, et al.,      )
                                  )
12           Plaintiff(s),        )      No. C09-3596 CRB (BZ)
                                  )
13      v.                        )
                                  )      **ORDER DENYING PLAINTIFFS'**
14  HEWLETT-PACKARD COMPANY,      )      **OBJECTIONS TO SPECIAL**
                                  )      **MASTER'S DISCOVERY**
15           Defendant(s).        )      **ORDER NO. 9**
    _____)

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17       Having reviewed the parties' papers regarding plaintiffs'

18  objections to Judge Warren's Discovery Management Order (DMO)

19  No. 9, **IT IS HEREBY ORDERED** that plaintiffs' objections are

20  **OVERRULED.**  On January 27, 2011, Judge Warren ruled that the

21  plaintiffs' "use of 'Omega' is to a computer program or a

22  system of that name, and not to an 'ecosystem' of which Omega

23  is merely a part."  Docket No. 137 at 5.  Plaintiffs did not

24  object to this Order, which specifically limited the scope of

25  discovery, and Judge Warren has applied this definition of

26  "Omega" throughout the time he has presided over the parties'

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1  discovery disputes.[1]  Accordingly, to the extent that

2  plaintiffs now object to Judge Warren's interpretation of

3  "Omega" in DMO No. 9, which was based on his January 27

4  ruling, that objection is untimely.  See FRCP 53(f)(2)("A

5  party may file objections to...the master's [order] no later

6  than 21 days after a copy is served, unless the court sets a

7  different time.")  Should Judge Breyer permit plaintiffs to

8  file their proposed fourth amended complaint, plaintiffs

9  should seek leave from Judge Breyer to ask Judge Warren to

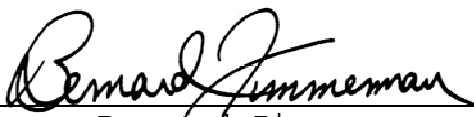10 review his discovery ruling in light of the amended complaint.

11      Plaintiffs also object to DMO No. 9 to the extent that

12 Judge Warren ruled that because the present complaint only

13 alleges errors by the Calculator, errors by any other part of

14 the compensation system are not relevant.  DMO No. 9 does not

15 so rule.  I read Judge Warren's ruling in DMO No. 9 as simply

16 confirming that defendant was permitted to make redactions

17 consistent with DMO Nos. 3 and 6, and that defendant had

18 averred that it has done so.  Since Judge Warren does not

19 appear to have been asked to review specific redactions to

20 determine whether they were improper, plaintiffs' objections

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23      [1]   Contrary to plaintiffs' argument, Judge Warren's
January 27 Order was not a preliminary ruling.  In DMO No. 6,
posted on March 14, 2011, Judge Warren confirmed that this
24 issue had been resolved in January: "The scope of what is and
what isn't 'Omega' has been a central theme in these discovery
25 disputes.  In [DMO #3], the Referee, relying on the allegations
of the operative Third Amended Complaint, resolved this issue
26 by ruling that Plaintiffs' use of the term 'Omega' is to a
computer program or a system by that name, and not to some sort
27 of compensation 'ecosystem' of which Omega is merely a part
(see, DMO #3 ¶ 5-7).  No party appealed from DMO #3."  Docket
28 No. 176 at fn. 2.  See also Docket No. 193 at 2-3.

1    are misplaced.

2    Dated: May 27, 2011

3                                    _____
                                      Bernard Zimmerman
4                                     United States Magistrate Judge

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6    G:\BZALL\-REFS\JOHNSON V. HEWLETT-PACKARD\ORDER DENYING PLAINTIFF'S
     OBJECTIONS TO SPECIAL MASTER'S ORDER NO. 9.wpd

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